

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

H.D.N. Corporation d/b/a Car Care Tech

(b) County of Residence of First Listed Plaintiff Harris County, Texas  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Ren Patrick Rigby, Jr., Sprott Rigby Newsom Robbins & Lunceford,  
P.C., 2211 Norfolk, Suite 1150, Houston, Texas 77098; 7135238333

**DEFENDANTS**

Autozone Texas, L.P.

County of Residence of First Listed Defendant Shelby County, Tenn  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

Simon D. Whiting, Burford & Ryburn, L.L.P., 3100 Lincoln  
Plaza, 500 N. Akard, Dallas, Texas 75201, 214-740-3119

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                                       |                                       |   |                                       |                                       |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
|   | PTF                                   | DEF                                   |   | PTF                                   | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Negligent hiring, supervision and/or management; ratification; conversion; theft; vicarious liability

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/26/2012

SIGNATURE OF ATTORNEY OF RECORD

/s/ Simon D. Whiting

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**H.D.N. CORPORATION d/b/a  
CAR CARE TECH,**

**Plaintiff,**

**v.**

**AUTOZONE TEXAS, L.P.,**

**Defendant.**

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**Civil Action No.:**

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**NOTICE OF REMOVAL OF DEFENDANT AUTOZONE TEXAS, L.P.**

**TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF TEXAS:**

Defendant, AutoZone Texas, L.P. ("AutoZone"), files this Notice of Removal of this case from the 281<sup>st</sup> Judicial District Court in and for Harris County, State of Texas, where it is now pending, to the United States District Court for the Southern District of Texas. As the basis for removal, Defendant respectfully represents that:

1. On or about November 15, 2012, Plaintiff commenced an action against AutoZone, Texas, L.P. in the 281<sup>st</sup> Judicial District Court in and for Harris County, State of Texas entitled "H.D.N. v. AutoZone Texas, L.P." Cause No. 2012-68158. On November 29, 2012, CT Corporation System upon whom service had been made on November 29, 2012, forwarded a copy of the Citation and Plaintiff's Original Petition to Defendant by FedEx 2 day delivery. Defendant received a copy of same on December 3, 2012. Attached hereto as Exhibit "A" is an Index of Documents Filed in State Court. Exhibit "A-1" is a certified copy of the Docket Sheet from the state court. Exhibit "A-2" is a certified copy Plaintiff's Original Petition and Request for Disclosure. Exhibit "A-3" is a certified copy of Harris County District Court Civil Case

Information Sheet. Exhibit “A-4” is a certified copy of Citation. Exhibit “A-5” is a certified copy of Certified Mail Receipts to AutoZone Texas L.P. Exhibit “A-6” is a certified copy of Defendant’s Original Answer. Exhibit “B” is a list of all counsel of record, including addresses, telephone numbers and parties represented.

2. Removal of this action is proper under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1332 based upon the parties’ diversity of citizenship and the amount in controversy, exclusive of interest and costs. This Notice of Removal is filed within thirty (30) days of receipt of the Plaintiff’s Original Petition and is timely filed under 28 U.S.C. § 1446(b).

3(a) Where there is complete diversity among parties and where the amount in controversy exceeds \$75,000, an action may be removed to federal court. 28 U.S.C. § 1332. Plaintiff is a citizen of the State of Texas. Original Petition at ¶ 2. AutoZone Texas, L.P. is a foreign corporation. AutoZone Texas, L.P. is incorporated under the laws of Delaware with its principal office in Memphis, Tennessee. Therefore, AutoZone Texas, L.P. is not a citizen of the State of Texas for diversity purposes. According, there is complete diversity among the parties.

3(b). In the present case, Plaintiff does not plead the amount it alleges it has been damaged. Original Petition ¶¶ 38, 39, 40 and 41. When a plaintiff does not allege a specific amount of damages, to invoke diversity jurisdiction on removal the defendant must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000. See *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir.1998). A defendant may carry its burden by showing that it is facially apparent from the petition that plaintiff’s claims are likely to exceed \$75,000 or by presenting summary-judgment-type evidence that the amount in controversy is likely to exceed \$75,000. *Id.* These tests are applied in order, and only if the “facially apparent” test is not met, will a court require “summary judgment-type” evidence of the amount in

controversy. *Pollet v. Sears Roebuck & Co.*, 46 Fed. Appx. 226, 2002 WL 1939917, at \*2-3 (5th Cir.2002); *Gipson v. Wal-Mart Stores, Inc.*, 2008 WL 4844206 (S.D. Tex. Nov. 3, 2008).

To determine the amount in controversy, the court may consider actual damages, exemplary damages and attorney's fees. *White v. FCI U.S.A., Inc.*, 319 F.3d 672, 675 (5th Cir. 2003).

Plaintiff alleges Defendant is liable for alleged acts of theft committed by an employee of Defendant pursuant to theories of negligent hiring, supervision and/or management, ratification, common law conversion, the Texas Theft Liability Act, and vicarious liability. Plaintiff further alleges damages as a result of such alleged violations. Original Petition ¶¶ 38, 39, 40 and 41. Plaintiff seeks actual damages, additional statutory damages of \$1,000, exemplary damages, prejudgment and post-judgment interest, statutory interest, attorney's fees and court costs. Original Petition at ¶¶ 33, 39, and 40. Given the nature of Plaintiff's allegations and the damages Plaintiff seeks, it is facially apparent that the amount in controversy exceeds \$75,000.00. See *Bourne v. Wal-Mart Stores, Inc.*, 2008 WL 4696932 at \*8-9. Accordingly, the amount in controversy requirement is satisfied.

3(c). Said action is removable to this Court pursuant to the provisions of 28 U.S.C. § 1441(a) in that the United States District Court for the Southern District of Texas, Houston Division, embraces the place where such action is pending.

4. Pursuant to 28 U.S.C. § 1446(a) and to L.R. 81 of the Local Rules of the United States District Court for the Southern District of Texas, Defendant has attached hereto all process, pleadings, and orders served on AutoZone in the State Court.

5. This Notice of Removal is proper pursuant to the provisions of 28 U.S.C. § 1446(b) in that it is being filed within thirty (30) days after the receipt by AutoZone of a copy of the Plaintiff's Original Petition from which it could first be ascertained that the case is one which is or has become removable.

6. AutoZone desires and is entitled to have this cause removed from the 281<sup>st</sup> Judicial District Court in and for Harris County, State of Texas, to the United States District Court for the Southern District of Texas, Houston Division, such being the District where said suit is pending.

7. Written notice of the filing of this Notice of Removal will be given to adverse parties as required by law.

8. A true copy of this Notice of Removal will be filed with the Clerk of the 281<sup>st</sup> Judicial District Court in and for Harris County, State of Texas, as required by law.

**WHEREFORE**, AutoZone Texas, L.P., prays that the above action now pending against it in the 281<sup>st</sup> Judicial District Court in and for Harris County, State of Texas, be removed therefrom to this Court.

Respectfully submitted,

BURFORD & RYBURN, L.L.P.

By: /s/ Simon D. Whiting  
SIMON D. WHITING  
Texas State Bar No.: 21373600  
HEATHER D. JOHNSON  
Texas State Bar No.: 24053694

3100 Lincoln Plaza  
500 North Akard Street  
Dallas, Texas 75201-6697  
Telephone: 214-740-3119  
Facsimile: 214-740-2832  
Email: [swhiting@birlaw.com](mailto:swhiting@birlaw.com)

**ATTORNEYS FOR DEFENDANT AUTOZONE  
TEXAS, L.P.**

**CERTIFICATE OF SERVICE**

In keeping with Rule 5 of the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument has been served upon Plaintiff's counsel of record via:

<u>✓</u>	Certified Mail/Return Receipt Requested
<u>      </u>	Telephonic Document Transfer (Facsimile)
<u>      </u>	Federal Express/Express Mail
<u>      </u>	Courier/Receipted Delivery
<u>      </u>	Registered Mail/Return Receipt Requested
<u>      </u>	Hand Delivery (In Person)
<u>      </u>	First Class Mail
<u>      </u>	Email

DATED: December 26, 2012.

/s/ Simon D. Whiting

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**H.D.N. CORPORATION d/b/a  
CAR CARE TECH,**

**Plaintiff,**

**v.**

**AUTOZONE TEXAS, L.P.,**

**Defendant.**

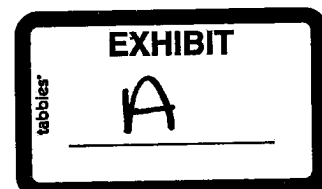
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**Civil Action No.:**

**DEFENDANT AUTOZONE TEXAS, L.P.'S  
INDEX OF DOCUMENTS FILED IN STATE COURT**



Pursuant to Local Rule 81.1(a)(3)(A), Defendant AutoZone Texas, L.P., respectfully submits this Index of Documents Filed in State Court in support of its Notice of Removal:

<b><u>DOCUMENT</u></b>	<b><u>DATE FILED IN STATE COURT</u></b>
1. Docket Sheet in State Court	
2. Plaintiff's Original Petition and Request for Disclosure	11/15/12
3. Civil Case Information Sheet	11/15/12
4. Citation	11/21/12
5. Certified mail receipt and tracking number	12/04/12
6. Defendant's Original Answer	12/18/12



Notes Color Key:	Private	Court	Docket Sheet
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Pr

Case: 201268158 - 7   Status: Active - Civil Court: 281 File Dt: 11/15/2012  
Type: DAMAGES (OTHER)  
Style: H D N CORPORATION (D/B/A CAR CARE TECH) vs AUTOZONE TEXAS LP

Docket Sheet Entries

Add

Save/Group

Total Items: 0

Note Type Filter:

Active	Posting Date	Comments	Last Mod User	History	Group
No Items Found					
1					

Trial Settings

Add

Active	Signed Date	Comments	Last Mod User	History	Group
No Items Found					
1					

EXHIBIT

tabbles

A-1



Filed 12 November 15 P3:59  
Chris Daniel - District Clerk  
Harris County  
ED101J017185541  
By: Nelson Cuero

2012-68158 / Court: 281

CAUSE NO. \_\_\_\_\_

H.D.N. Corporation d/b/a	§	IN THE DISTRICT COURT OF
Car Care Tech ("Plaintiff")	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
	§	
AutoZone Texas, LP	§	
("Defendant")	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND  
REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES H.D.N. CORPORATION D/B/A CAR CARE TECH ("Plaintiff"), hereinafter referred to as Plaintiff, complaining of AUTOZONE TEXAS, LP ("Defendant" or "Autozone"), and respectfully shows this Honorable Court the following:

**I.**

**Discovery**

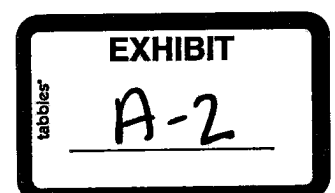
1. ~~Plaintiff intends to conduct discovery under Level 3, Texas Rule of Civil Procedure 190.4.~~

**II.**

**Parties**

2. Plaintiff is a Texas corporation formed under the laws of the State of Texas with its principal place of business located at 11827 Chimney Rock Road, Houston, Texas 77035-4411.

3. Defendant, Autozone Texas, LP, is a limited partnership formed in Delaware. Its principal place of business is 3030 Poplar Avenue, Memphis, Tennessee 38111.



Service of process may be obtained by serving its Registered Agent for Service CT Corporation System, 800 South Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710. Plaintiff requests issuance of citation and service upon Autozone Texas, LP.

4 It has become necessary to bring this action because of damages sustained by Plaintiff during Plaintiff's business relationship with Defendant in Harris County, Texas.

### **III.**

#### **Jurisdiction**

5. This court has jurisdiction over this cause of action because the amount in controversy is within the jurisdictional limits of the Court.

6. This court has jurisdiction over Autozone, LP because this Defendant engages in business transactions in the state of Texas, and Plaintiff's causes of action arise out of this Defendant's business transactions in the state of Texas.

### **IV.**

#### **Venue**

7. ~~Venue is proper in Harris County as the county in which the events giving rise~~ to this lawsuit occurred in Harris County. Tex. Civ. Prac. & Rem. Code § 15.002. Further, venue is proper in Harris County as the county where Defendant has stores, offices, and conducts business.

### **V.**

#### **Facts**

8. This lawsuit arises out of acts of theft committed by an employee of Autozone Texas, LP against the Plaintiff. The acts of theft took place in a continuing course of

activity over approximately 4-5 years. Said acts were only discovered by Plaintiff approximately one year ago.

9. Plaintiff brought these events to the attention of a representative of Autozone in January 2012. Plaintiff's representative contacted Rick Duran and presented a completed fraud affidavit. Mr. Duran ignored this, and eventually stopped accepting phone calls from Hiep Nguyen.

10. Eventually, the general manager in "customer satisfaction," Jerry Carrier, and Jim Stone, area sales manager in "customer satisfaction," met with Hiep Nguyen. These gentlemen would not entertain Mr. Nguyen's complaints informing Mr. Nguyen that he was out of luck and that they had lawyers to defend matters such as this. As a result, this lawsuit followed.

11. The acts of theft were performed repeatedly by "Douglas" (last name unknown), an employee of Autozone.

12. Car Care Tech purchased auto parts from Autozone on almost a daily basis. Purchases totaled approximately \$5,000.00 per month. Douglas would routinely charge Car Care Tech for items it did not purchase. Due to numerous items on each invoice, these discrepancies were not discovered by Plaintiff until November, 2011. Upon information and belief, Douglas would then "resell" the item in question to random individuals for cash.

**VI.**

**Causes of Action**

**A. Negligent Hiring, Supervision and/or Management**

13. Plaintiff alleges and incorporates by reference the allegations set forth in paragraph 8 through paragraph 12 of this Original Petition, the same as if fully set forth herein.

14. Plaintiff will show that the Defendant owed a duty to its clients and customers, including Plaintiff, to exercise ordinary care in the hiring of competent employees, and in the supervision and management of said employees.

15. Defendant is guilty of negligent hiring because Defendant owed Plaintiff a duty to properly hire, train, supervise and retain their employees. Defendant breached the duty of care owed to Plaintiff in the following ways:

1. Hiring and employing a criminal, for a position with great independence, responsibility and access to customer money;

2. Failing to ensure that its employee was qualified for a job that required special skills;

3. Failing to properly train its employee;

4. Failing to properly supervise its employee;

5. Failing to properly remain knowledgeable about its employee's competence, fitness and conduct.

16. Each of the above acts and/or omissions alone or in combination are a direct and proximate cause of the Plaintiff's damages.

17. Plaintiff would further show that Defendant failed to use ordinary care in these respects, including, but not limited to, failing to properly investigate potential job applicants, failing to properly supervise Defendant's personnel, failing to implement adequate safeguards to prevent the situation that resulted in Plaintiff's damages, and failing to provide adequate oversight and cross-checks for such employees. These conditions created an environment in which theft from customers was likely and reasonably foreseeable to occur, and which did in fact occur in the course of the transactions involving Plaintiff described above, which proximately caused the damages sustained by Plaintiff herein, and for which Plaintiff hereby sues.

18. Defendant's breach of duty proximately caused injury to Plaintiff, because without such negligent acts and/or omissions Plaintiff would not have suffered damage as a result of having money stolen from Plaintiff. This theft and damage was foreseeable to Defendant as a result of the improper hiring, supervising, training and retaining of its employee because theft is exactly the form of damage to be reasonably expected by hiring an unqualified, untrustworthy criminal, and leaving him unsupervised with the ability to steal from customers. Defendant breached these duties by doing so, and accordingly is guilty of negligent hiring.

#### **B. Ratification**

19. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs numbered 8-12 of this Petition, the same as if fully set forth herein.

20. In the alternative and in addition to the foregoing, whenever in this petition it is alleged that the Defendant did any act or thing, it is meant that Defendant's officers, agents, partners, servants, principals, vice principals, borrowed servants, employees

or representatives did such act or thing and that at the time such act or thing was done, it was done with the full authorization or ratification of the Defendant or was done in the normal and routine course and scope of employment of Defendant's officers, agents, partners, servants, principals, vice principals, borrowed servants, employees or representatives duty or capacity. Defendant is vicariously liable for the acts of his officers, agents, partners, servants, principals, vice principals, borrowed servants, employees or representatives because of an employer-employee or agency by estoppels, or the borrowed servant doctrine.

**C. Common Law Conversion**

21. Plaintiff reallages and incorporates by reference the allegations set forth in paragraphs 8-12 of this Original Petition, the same as if fully set forth herein.

22. Defendant is liable for the conversion of Plaintiff's property (money) because one of Defendant's employees wrongfully acquired possession of Plaintiff's property (money) by taking it without Plaintiff's consent.

23. As such, Defendant has unlawfully exercised dominion and control over Plaintiff's property (money) for an indefinite time, in denial of and inconsistent with Plaintiff's rights to said property (money).

24. Accordingly, Plaintiff has suffered damages in an amount within the jurisdictional limits of this Court for which Plaintiff now seeks recovery.

25. Plaintiff is also entitled to interest on the value of the converted property (money), at the prejudgment rate of interest.

26. Defendant's conversion of the property (money), as alleged above, was fraudulent and malicious in that Defendant specifically intended to cause substantial

injury to Plaintiff. Accordingly, Plaintiff asks that exemplary damage be awarded against the Defendant.

**D. Theft Liability Act**

27. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 8-12 of this Original Petition, the same as if fully set forth herein.

28. Plaintiff brings this action under the Texas Theft Liability Act for an unlawful appropriation of property under Tex. Penal Code § 31.03.

29. Plaintiff owns and has lawful right to possession of the property.

30. Defendant unlawfully appropriated Plaintiff's property in violation of Texas Penal Code.

31. Defendant's unlawful appropriation was made with the intent to deprive Plaintiff of its property rights in the Property.

32. Defendant's wrongful conduct caused injury to Plaintiff, which resulted in the damages in excess of the minimum damages of this Court.

33. Upon proof of actual damages, Plaintiff is entitled to additional statutory damages of up to \$1,000 from Defendant under Tex. Civ. Prac. & Rem. Code § 134.005(a)(1).

34. Plaintiff injury resulted from the intentional acts of Defendant and or its employees and representatives, which entitles Plaintiff to exemplary damages under Tex. Civ. Prac. & Rem. Code § 41.003(a).

35. Further, Plaintiff has been forced to retain the undersigned counsel to prosecute its claims and is also entitled to compensation for the reasonable and

necessary attorney's fees, which it has incurred bringing this claim pursuant to Tex. Civ. Prac. & Rem. Code § 134.005(b).

**E. Vicarious Liability**

36. Plaintiff reallages and incorporates by reference the allegations set forth in paragraphs 8-12 of this Original Petition, the same as if fully set forth herein.

37. All of the specific acts complained of herein are attributable to the individual conduct of Defendant, individually, and/or as agents, servants, representatives, partners, shareholders, employees, officers, vice principals and/or managers. The liability and responsibility of individual Defendants is vicarious and joint and several. Also, at all times material, all Defendants, whether acting directly, or indirectly are vicariously liable for each and every act and omission of its agents, whether acting with actual or apparent authority and to the extent it ratified those acts and omissions that were outside the authority of its representatives. Further, Plaintiff was a customer of Defendant and was entitled to absolute fidelity from Defendant because of his duties owed to Plaintiff. Therefore Defendant is vicariously liable for each and every authorized act of his agents, servants, representatives, partners, shareholders, employees, officers, vice principals and/or managers.

**VII.**

**Damages**

38. Plaintiff sustained damages as a direct result of Defendant's acts as described above in excess of the minimum jurisdictional limits of this court.

39. Upon the trial of this case, it shall be shown Plaintiff was caused to sustain damages as a result of Defendant's conduct. Plaintiff respectfully requests the Court



and jury award the amount of loss Plaintiff has incurred in the past and will incur in the future. There are certain elements of damages to be considered separately and individually for the purpose of determining the sum of money that would fairly and reasonably compensate Plaintiff for the injuries, damages and losses incurred and to be incurred. From the date of the first occurrence in question until the time of trial of this cause, Plaintiff seeks every element of damage allowed by Texas law with respect to the causes of action mentioned above, including but not limited to Plaintiff's actual damages, pre-judgment interest, post-judgment interest, court costs, attorneys' fees, statutory interest and exemplary and punitive damages.

**VIII.**

**Attorneys' Fees**

40. Plaintiff has retained the undersigned law firm to represent the Plaintiff in this action and has agreed to pay the firm a reasonable fee for necessary services. An award of attorney's fees to the Plaintiff would be equitable and just and authorized by Tex. Civ. Prac. & Rem. Code § 134.005.

41. Plaintiff is entitled to recover attorney's fees in a sum that is reasonable in relation to the amount of work expended. In this connection, Plaintiff will show that the attorneys whose names are subscribed to this pleading have been employed to assist Plaintiff in the prosecution of this action, as well as appeals to any appellate court and the Texas Supreme Court.

**IX.**

**Request for Disclosure**

Pursuant to Texas Rule of Civil Procedure 194.2, Defendant is requested to disclose within fifty (50) days of this request, the information and material described in Texas Rule of Civil Procedure 194.2 (a)-(l).

**X.**

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiff, H.D.N. CORPORATION D/B/A CAR CARE TECH, prays this Honorable Court issue citation for Defendant to appear and answer herein and that following the date for which the answer is due Plaintiff be awarded a judgment against Defendant for the following:

- a. Actual damages;
  - b. Exemplary damages;
  - c. Reasonable and necessary attorney's fees and costs of suit;
  - d. Pre-judgment interest;
  - e. Post-judgment interest; and
  - f. All such other and further relief, general and special, at law and in equity,
- to which Plaintiff may be justly entitled and for which Plaintiff will forever pray.

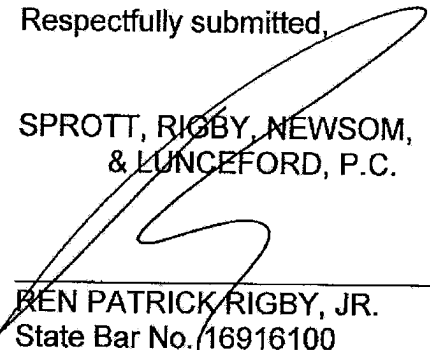
WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, that on final trial hereof Plaintiff have:

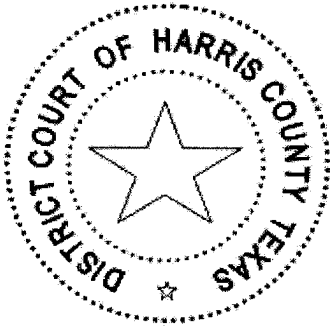
1. Judgment against Defendant in a sum in excess of the minimum jurisdictional limits of this Honorable Court.
2. Pre-judgment interest at the legal rate.

3. Post-judgment interest at the legal rate until paid.
4. Costs of Court.
5. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

SPROTT, RIGBY, NEWSOM, ROBBINS,  
& LUNCEFORD, P.C.

  
BEN PATRICK RIGBY, JR.  
State Bar No. 16916100  
2211 Norfolk, Suite 1150  
Houston, Texas 77098  
(713) 523-8338  
(713) 523-9422 (FAX)  
ATTORNEYS FOR PLAINTIFF



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office  
this December 18, 2012

Certified Document Number: 53949990 Total Pages: 11

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

Filed 12 November 15 P3:59  
Chris Daniel - District Clerk  
Harris County  
ED101J017185541  
By: Nelson Cuero

2012-68158 / Court 281

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED \_\_\_\_\_

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

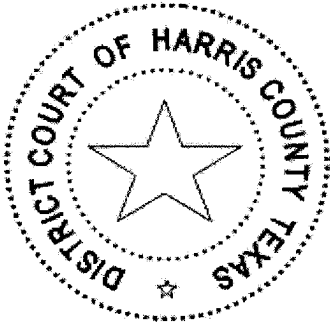
A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

<b>1. Contact information for person completing case information sheet:</b> Name: <u>Ren Patrick Rigby, Jr.</u> Email: <u>rigby@sprotrigby.com</u> Address: <u>2211 Norfolk, Suite 1150</u> Telephone: <u>7135238338</u> City/State/Zip: <u>Houston, TX 77098</u> Fax: <u>7135239422</u> Signature: <u>[Signature]</u> State Bar No: <u>16916100</u>		<b>Names of parties in case:</b> Plaintiff(s)/Petitioner(s): <u>HDN Corp. d/b/a Car Care Tech</u> Defendant(s)/Respondent(s): <u>AutoZone Texas, LP</u> [Attach additional page as necessary to list all parties]		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ <b>Additional Parties in Child Support Case:</b> Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____					
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>									
<b>Civil</b>			<b>Family Law</b>						
<b>Contract</b> <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:		<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <b>Malpractice</b> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <b>Product Liability</b> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage: <u>Theft</u>		<b>Real Property</b> <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pro-indictment <input type="checkbox"/> Other:		<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:		<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:		<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:							
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		<b>Probate &amp; Mental Health</b> <b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:							
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>									
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover					

EXHIBIT

A-3

tabbles



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office  
this December 18, 2012

Certified Document Number: 53949991 Total Pages: 1

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

CAUSE NO. 201268158

CONFIRMED FILE DATE: 11/21/2012

RECEIPT NO. 449781  
11-15-201270.00 CTM  
TR # 72847307PLAINTIFF: H D N CORPORATION (D/B/A CAR CARE TECH)  
vs.

DEFENDANT: AUTOZONE TEXAS LP

In The 281st  
Judicial District Court  
of Harris County, Texas  
281ST DISTRICT COURT  
Houston, TX

## CITATION (CERTIFIED)

THE STATE OF TEXAS  
County of HarrisTO: AUTOZONE TEXAS LP (LIMITED PARTNERSHIP) MAY BE OBTAINED BY SERVING ITS  
REGISTERED AGENT FOR SERVICE C T CORPORATION SYSTEM  
800 SOUTH GAY STREET SUITE 2021 KNOXVILLE TN 379299710Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSUREThis instrument was filed on the 15th day of November, 2012, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

## TO OFFICER SERVING:

This citation was issued on 21st day of November, 2012, under my hand and seal of said Court.

Issued at request of:  
RIGBY, REN PATRICK JR.  
2211 NORFOLK #1150  
HOUSTON, TX 77098  
Tel: (713) 523-8338  
Bar No.: 16916100CHRIS DANIEL, District Clerk  
Harris County, Texas  
201 Caroline Houston, Texas 77002  
(P.O. Box 4651, Houston, Texas 77210)

GENERATED BY: SOLIS, ADILIANI A. 4BH/7MM/9436089

## CLERK'S RETURN BY MAILING

Came to hand the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and executed by mailing to Defendant certified mail, return receipt requested, restricted delivery, a true copy of this citation together with an attached copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE to the following addressee at address:

ADDRESSEE

## ADDRESS

Service was executed in accordance with Rule 106(a) (2) TRCP, upon the Defendant as evidenced by the return receipt incorporated herein and attached hereto at \_\_\_\_\_

on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
by U.S. Postal delivery to \_\_\_\_\_

This citation was not executed for the following reason: \_\_\_\_\_

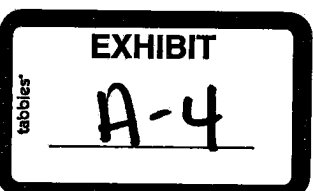
CHRIS DANIEL, District Clerk  
HARRIS COUNTY, T E X A S

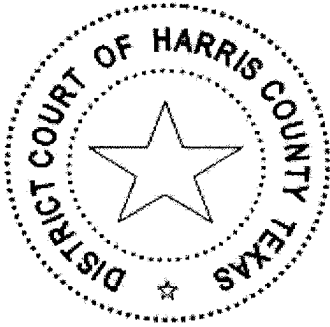
By \_\_\_\_\_, Deputy

Certified Document Number: 54020629 - Page 1 of 1

N.INT.CITM.P

[REDACTED]





I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office  
this December 18, 2012

Certified Document Number: 54020629 Total Pages: 1

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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P1

2012-68158  
281st Court

**FILED**  
Chris Daniel  
District Clerk  
DEC 4 2012  
Harris County, Texas  
Time: \_\_\_\_\_  
By: \_\_\_\_\_ Deputy

7005 3110 0000 2621 2655

**CHRIS DANIEL**  
HARRIS COUNTY DISTRICT CLERK  
P. O. Box 4651  
HOUSTON, TEXAS 77210-4651

Postage \$ 1.50  
Certified Fee 2.35  
Return Receipt Fee (Endorsement Required) 2.35  
Restricted Delivery Fee (Endorsement Required) 2.35  
Total Postage & Fees 8.55

Postmark Here  
2012-68158  
281st CRT

Sent To Autozone Texas LP by serving its registered agent C T Corporation System  
Street, Apt. No., or PO Box No. 800 South Gay Street, Ste. 2021  
City, State, ZIP+4 Knoxville, TN 37929-9710

PS Form 3800, JUL 09

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Autozone Texas LP by serving its registered agent C T Corporation System  
800 South Gay Street, Ste. 2021  
Knoxville, TN 37929-9710

2012-68158  
281st CRT

**2. Article Number**  
(Transfer from service label)

7005 3110 0000 2621 2655

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

**A. Signature**

X

- ☐ Agent  
☐ Addressee

**B. Received by (Printed Name)**

**C. Date of Delivery**

NOV 26 2012

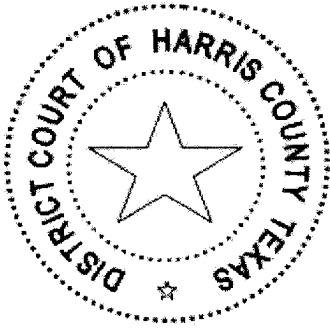
- D. Is delivery address different from item 1?** ☐ Yes  
If YES, enter delivery address below: ☐ No

**3. Service Type**

- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

**4. Restricted Delivery? (Extra Fee)** ☐ Yes

**EXHIBIT**  
**A-5**



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office  
this December 18, 2012

Certified Document Number: 54105915 Total Pages: 1

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

Filed 12 December 18 P3:44  
Chris Daniel - District Clerk  
Harris County  
ED101J017234960  
By: adiliani a. solis

**CAUSE NO. 2012-68158**

<b>H.D.N. CORPORATION d/b/a</b>	§	<b>IN THE DISTRICT COURT</b>
<b>CAR CARE TECH,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>AUTOZONE TEXAS, L.P.,</b>	§	
	§	
<b>Defendant.</b>	§	<b>281<sup>ST</sup> JUDICIAL DISTRICT</b>

---

**DEFENDANT'S ORIGINAL ANSWER**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, Defendant AutoZone Texas, L.P. ("Defendant"), Defendant in the above entitled and numbered cause, and files this its Original Answer to Plaintiff's Original Petition herein, and for same would respectfully show the Court the following:

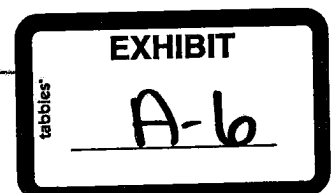
**I.**  
**GENERAL DENIAL**

Defendant, in keeping with Rule 92 of the Texas Rules of Civil Procedure, generally denies all and singular, each and every material allegation contained in Plaintiff's Original Petition and says that same is not true in whole or in part and demands strict proof thereof by a preponderance of the evidence before a fair and impartial jury.

**II.**  
**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

1. To the extent that Defendant is found responsible or liable for any of the damages allegedly sustained by Plaintiff, if at all, then such damage should be offset and Defendant credited for any benefit received by Plaintiff and/or monies paid to Plaintiff, which originated from or were provided by Defendant.



**SECOND DEFENSE**

2. In the alternative, if Plaintiff has sustained any damages, then such damages should be reduced by the amount that Plaintiff could have reasonably mitigated such damages by proper action and by the amount Plaintiff has actually mitigated such alleged damages, if any.

**THIRD DEFENSE**

3. In the alternative, and by way of affirmative defense, Plaintiff is barred from recovery herein by the applicable Statute of Limitations.

**FOURTH DEFENSE**

4. In the alternative, and by way of affirmative defense, Plaintiff is barred from recovery herein by laches.

**FIFTH DEFENSE**

5. In the alternative, and by way of affirmative defense, Plaintiff is barred from recovery herein by contributory negligence and proportionate responsibility under Chapter 33 of the Texas Civil Practice and Remedies Code.

**SIXTH DEFENSE**

6. In the alternative, and by way of affirmative defense, Plaintiff is barred from recovery herein by reason of deviation.

**SEVENTH DEFENSE**

7. In the alternative, and by way of affirmative defense, Defendant affirmatively asserts and contends that Plaintiff is not entitled to recover prejudgment interest in this case. If prejudgment interest is recoverable, it is limited in keeping with TEXAS FINANCE CODE ANN., Chapter 304.

**III.  
PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Defendant prays that Plaintiff take nothing from it, that Defendant recovers its cost of suit, and for such other and further relief, both special and general, at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

BURFORD & RYBURN, L.L.P.

By: /s/ Simon D. Whiting  
SIMON D. WHITING  
Texas State Bar No.: 21373600  
HEATHER D. JOHNSON  
Texas State Bar No.: 24053694

3100 Lincoln Plaza  
500 North Akard Street  
Dallas, Texas 75201-6697  
Telephone: 214-740-3119  
Facsimile: 214-740-2832  
Email: swhiting@brlaw.com

**ATTORNEYS FOR DEFENDANT AUTOZONE  
TEXAS, L.P.**

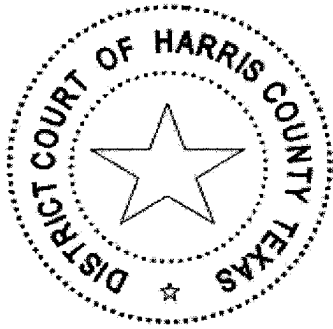
**CERTIFICATE OF SERVICE**

In keeping with Rule 21a of the TEXAS RULES OF CIVIL PROCEDURE, I hereby certify that a true and correct copy of the foregoing instrument has been served upon all attorneys of record via:

<input checked="" type="checkbox"/>	Certified Mail/Return Receipt Requested
<input type="checkbox"/>	Telephonic Document Transfer (Facsimile)
<input type="checkbox"/>	Federal Express/Express Mail
<input type="checkbox"/>	Courier/Receipted Delivery
<input type="checkbox"/>	Registered Mail/Return Receipt Requested
<input type="checkbox"/>	Hand Delivery (In Person)
<input type="checkbox"/>	First Class Mail
<input type="checkbox"/>	Email

DATED: December 18, 2012.

/s/ Simon D. Whiting



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office  
this December 19, 2012

Certified Document Number: 54231642 Total Pages: 3

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

**CAUSE NO. 2012-68158**

**H.D.N. CORPORATION d/b/a  
CAR CARE TECH,**

**Plaintiff,**

**v.**

**AUTOZONE TEXAS, L.P.,**

**Defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§

**IN THE DISTRICT COURT**

**HARRIS COUNTY, TEXAS**

**281<sup>ST</sup> JUDICIAL DISTRICT**

---

**LIST OF ALL COUNSEL OF RECORD,  
INCLUDING ADDRESSES, TELEPHONE NUMBERS  
AND PARTIES REPRESENTED**

Mr. Ren Patrick Rigby, Jr.

SPROTT RIGBY NEWSOM ROBBINS & LUNCEFORD, P.C.

2211 Norfolk

Suite 1150

Houston, Texas 77098

Phone: 713-523-8338

Facsimile: 713-523-9422

Email: [rigby@sprottrigby.com](mailto:rigby@sprottrigby.com)

SBN: 16916100

**ATTORNEYS FOR PLAINTIFF H.D.N. CORPORATION D/B/A CAR CARE TECH**

**AND**

Mr. Simon D. Whiting

Ms. Heather D. Johnson

BURFORD & RYBURN, L.L.P.

3100 Lincoln Plaza

500 North Akard Street

Dallas, Texas 75201-6697

Telephone: 214-740-3119

Facsimile: 214-740-2832

Email: [swhiting@brlaw.com](mailto:swhiting@brlaw.com)

Whiting's SBN: 21373600

Johnson's SBN: 24053694

**ATTORNEYS FOR DEFENDANT AUTOZONE TEXAS, L.P.**

